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SUPREME COURT OF THE UNITED STATES.

No. 84.

ADAMS, CUNNINGHAM, & CO. PLAINTIFFS,

VERSUS

CALVIN JONES.

ON A CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT U. S. FOR WASHINGTON.

At a circuit court of the United States, begun and held at Nashville, in and for the district of West Tennessee, on the first Monday, being the fourth day of September, in the year one thousand eight hundred and thirty-seven, and in the sixty-first year of the independence of the United States.

Present: the honorable John Catron, one of the associate justices of the Supreme Court of the United States, and the honorable Morgan W. Brown, judge of the courts of the United States for the districts of East and West Tennessee.

ADAMS, CUNNINGHAM, & Co. Plaintiffs,
vs.
CALVIN JONES, Defendant. } Case.

Calvin Jones, a citizen of the State of Tennessee, was attached by writ of capias ad respondendum, issued 22d May, 1835, to answer William Adams, John Cunningham, and Richard P. Lawrence, citizens of the State of New York, and merchants in partnership, under the firm of Adams, Cunningham, & Co. of a plea of trespass on the case, to their damage eight hundred dollars.

And thereupon, on the first day of September, 1835, the plaintiffs, by their attorney, filed their declaration, which is as follows, to wit:

CIRCUIT COURT OF THE UNITED STATES,

District of West Tennessee, ss.

William Adams, John Cunningham, and Richard P. Lawrence, citizens of the State of New York, and merchants in partnership, under the firm of Adams, Cunningham, & Co. complain of Calvin Jones, a citizen of the State of Tennessee, in custody, &c. of a plea of trespass on the case: for that, whereas, on the day of 1832, at New York, to wit, at Nashville, in the district aforesaid, in consideration that the plaintiffs, at the special instance and request of the defendant, would sell and deliver to one Betsey Miller, (otherwise called Elizabeth A. Miller,) on credit, all such goods as she, the said Betsey Miller, should have occasion for and require of the said plaintiffs, he, the said defendant, undertook, and then and there faithfully promised the said plaintiffs to be accountable to them for whatever goods they, the said plaintiffs, should sell, as aforesaid, to the said Betsey Miller; and the said plaintiffs aver, that they, confiding in the said promise and undertaking of the said defendant, did afterwards, to wit, on the day and year aforesaid, at New York, to wit, at Nashville aforesaid, sell and deliver to the said Betsey Miller, on certain credit, then and there agreed upon between the plaintiffs and said Betsey Miller, certain goods of great value, which she, the said Betsey Miller, then and there had occasion for and required of the said plaintiffs, and at and for certain reasonable prices, then and there agreed upon, by and between the said plaintiffs and the said Betsey Miller, amounting in the whole to a large sum of money, to wit, the sum of $1,527 96; and that, although the said credit and time of payment of the price of said goods by the said Betsey Miller *by the said Betsey Miller* to the said plaintiffs, hath long since elapsed, yet the said Betsey Miller hath not (although she was afterwards, to wit, on the day of 18 , at New York, to wit, at Nashville aforesaid, requested by the plaintiffs so to do,) as yet paid the said sum of money, but hath hitherto wholly neglected and refused so to do, to wit, at Nashville aforesaid, of all which said premises the said defendant then and there had notice, yet the said defendant, not regarding his said promise and undertaking, hath not, as yet, accounted to them, the said plaintiffs, or paid them the said sum of money for the said goods, although then and there requested so to do, but wholly neglects and refuses so to do, to their damage eight hundred dollars. And whereas, also, the defendant afterwards, to wit, on the day and year aforesaid, at New York, to wit, at Nashville aforesaid, was indebted to the plaintiffs in the further sum of $1,527 96, for divers goods, wares, and merchandise, by the said plaintiffs before that time bargained, sold to the said defendant, and delivered to the said Betsey Miller, at his special instance and request; and being so indebted, and in consideration thereof, the defendants then and there promised the plaintiffs to pay them the same on request, yet the defendant, although often requested, hath not as yet paid the same to the plaintiffs, but wholly neglects and refuses so to do, to

their damage eight hundred dollars, and therefore they sue, by their attorneys.

FOSTER & FOGG.

And thereupon the defendant, by his attorneys, Yerger and Scott, pleads non assumpsit, to which the plaintiffs take issue. And said cause was thence continued, from term to term, until the day and year first aforesaid.

Wednesday, 6th September, 1837.

The parties, by their attorneys, appear; and come also a jury, of good and lawful men, to wit, Levi Wade, John S. Russwurm, Marcus Boyd, Francis McGavock, Jacob McGavock, Philip Shute, Daniel Latherman, Elisha White, Calvin H. Nicholson, John Keenan, Henry B. McDonald, and Robert Bradford, who, being elected, tried, and sworn, the truth to speak upon the issue joined, by consent of the parties, are permitted to disperse, and meet again on to-morrow, at the meeting of the court, to proceed with the trial of this cause.

Thursday, 7th September, 1837.

The parties, by their attorneys, appear; and the jury heretofore sworn having returned into court, and resumed the consideration of this cause, on their oaths do say, that the defendant did undertake and promise, in manner and form as the plaintiffs, in declaring have alleged, and they assess the plaintiffs damages, by reason of the premises, to eight hundred and forty-one dollars and two cents.

Friday, 29th September, 1837.

The parties, by their attorneys, again appear; and the defendant moves the court for a new trial of the issue in this cause, which motion is postponed by the court for further consideration thereof.

Monday, 2d October, 1837.

This is an action on the case, commenced on the 22d May, 1835, in which the general issue of non assumpsit is pleaded. The action is founded on a guaranty made by the defendant, and which was read in evidence upon the trial. During the progress of the cause, at the present term of the court, and whilst the same was before the jury, it occurred as a question, whether the plaintiffs were bound to give notice to the defendant, that they had accepted or acted upon the guaranty, and given credit on the faith of it. Upon which question, the opinions of the judges were opposed, whereupon, on motion of the plaintiffs, by their attorney, that the point on which the disagree-

ment hath happened, may, during the term, be stated, under the direction of the judges, and certified under the seal of the court, to the Supreme Court, to be finally decided, it is ordered, that the foregoing statement of the pleadings, and the following statement of facts, which is made under the direction of the judges, be certified, according to the request of the plaintiffs, and the law in that case made and provided, to wit:

The defendant, Jones, made and executed, at the time it bears date, the guaranty on which the action is founded, and which is in the words and figures following, to wit:

"RALEIGH, *Sept. 25th*, 1832.

Mr. WILLIAM A. WILLIAMS:

SIR: On this sheet you have the list of articles wanted for Miss Betsey Miller's millinery establishment, which you were so very good as to offer to purchase for her. I will be security for the payment, either to you, or the merchants in New York, of whom you may purchase, and you may leave this in their hands, or otherwise, as may be proper. I hope, to your favor and view, will be added all possible favor by the merchants, to the young lady, in quality and prices of goods, as I have no doubt she merits as much, by her late knowledge of her business, industry, and pure conduct and principles, as any whatever.

CALVIN JONES.

After the compliment that is paid me above, I should hardly be willing to place my name so near it, was I not told it was necessary and proper the merchants should know my handwriting generally, and particularly my signature.

ELIZABETH A. MILLER.

List of Millinery Articles.

1½ dozen large band-boxes; 1 dozen 2d sized do.; 1 case Leghorn bonnets, assorted numbers; 1 dozen open straw bonnets, for children; 1½ dozen navarinoes, assorted qualities; 3 dozen fashionable straw bonnets, assorted; ½ dozen black navarinoes; 2 fashionable silk bonnets, ready made, and patterns; 1 fashionable black silk dress, ready made, and patterns; one set of fashionable pelesse patterns; 4 sets of bonnet ribbons, best; 6 sets common bonnet ribbons; 4 pieces gauze ribbons, different widths and colors; 1 box assorted lutestring ribbons; 1 set of wide white, pink, blue, green, and straw color lustring ribbons; 3 dozen belt ribbons, assorted qualities and colors; one piece of black lutestring; one piece black gro de naples; one piece satin levantine; one do. common black satin; 4 pieces fashionable colored silks, assorted; one piece white satin;

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½ do. green gro de nap; 1 piece of white florence; one do. green florence; one ditto green florence, want 30 yds. do.; one ditto straw color ditto; 1 ditto pink and blue ditto; 1 ditto green banaige; 1 piece white Italian crape, 1 ditto black ditto; 1 piece foundation muslin; 1 ditto buckram, for bonnet crowns; 2 dozen painted dolls; 1 piece brown gro de zan; 1 piece brown circassian; 3 pieces plaid for ladies' cloaks, assorted; 3 do. green flannel, 20 to 25 yards; 2 do. plain Swiss muslin, 1 best; 2 do. book muslin, assorted; 3 do. millinet; a few pieces insertion muslin; a few worked edgings; some bobinet laces and edgings; 1 piece wide plain bobinet lace; 1 dozen muslin capes and collars, tamboured; ½ dozen capes, best quality, muslin; one dozen ladies muslin caps, assorted qualities, 2 pieces of jaconet muslin, 1 best; 2 pieces cambrick, 1 best, both white; 4 pieces colored cambrick, 2 black, 1 brown, 1 lead; 2 dozen sheets wadding; 2 pieces skirting; some French tapes, assorted colors and width; some wire for bonnets; ½ dozen bunches silk piping cord; some white cotton cords; 1 dozen imitation pocket handkerchiefs; 1 dozen boxes hooks and eyes; assortment of needles and pins; 2 dozen paste boards; 1 box perfumed soap; a few bottles cologne water; a few bottles Florida and lavender water; braids, different colors, silk and worsted, narrow; 2 bunches cane, for bonnets; 1 pound sewing silk, assorted colors; 2 do. black ditto; ball thread, different colors; assortment white spool thread; 2 pieces thread lace; ½ dozen merino handkerchiefs; 1 dozen imitation ditto; 1 dozen fancy gauze and crape handkerchiefs; one dozen fancy silk handkerchiefs; some ladies gloves; 3 pieces crape base, 1 pink, 1 white, and one straw, colors; 4 dozen ladies cotton hose, assorted qualities; ½ dozen thread edgings; assortment ribbon wire; one box artificial flowers, assorted; one box brass thimbles; assortment of small beads for bags and guards; 2 pieces bobinet footing; 3 dozen brazilian tuck combs; 3 dozen do. side combs; ½ dozen papers hair powder; 1 dozen corsetts, different numbers; ½ dozen white corded petticoats; 1 piece brown battise, for bonnets; some fashionable articles for ladies dresses; a piece of red ground calico; 1 ditto chocolate color ditto; a few dozen of prunella shoes, assorted; 2 pieces chip; 1 piece black bombazine; 1 dozen bunches round black braid; one shell comb, middling size; ½ dozen pieces of showy calico; 1 piece ponges; prints, of the latest fashions."

Mr. Williams, the person named in the guaranty, purchased the articles enumerated from the plaintiffs, who were merchants in New York, on the 28th October, 1832. The goods were furnished on the faith of the guaranty, which was left with the plaintiffs. The defendant at the date of the guaranty, and until about the first March or April following, resided in Raleigh, North Carolina; about which latter period, he removed to Boliver, in Tennessee. The deposition of James B. Cunningham, marked B. was read, as is herein inserted as a part of the statement of facts in the cause.

DEPOSITION.

STATE OF NEW YORK,
New York City.

The following deposition was taken before one Richard Riker, recorder of the city of New York, and one of the judges of the court of common pleas for the city and county of New York, being a court of record of common law jurisdiction, at my chambers in the city hall of the city of New York, on this 27th day of July, 1835, to be read in evidence in a suit now pending in the circuit court of the United States of America, for the district of West Tennessee, holden at Nashville, in which Adams, Cunningham & Co. are plaintiffs, and Calvin Jones defendant.

James B. Cunningham, of lawful age, a witness produced by the plaintiffs, being duly and carefully examined, cautioned and sworn to testify the whole truth, deposeth and saith, that he resides in the city of New York, more than one hundred miles from Nashville in the State of Tennessee; that deponent previous to, and during the month of October, 1832, and up to January, 1835, was a clerk in the mercantile house of Adams, Cunningham & Co. of the city of New York, which house consisted of Wm. Adams, John Cunningham and Richard P. Lawrence; that deponent knows that on or about the 26th day of October, 1832, Mr. William A. Williams, mentioned in the guaranty or security of Calvin Jones, herein after specified, made and concluded an arrangement with Addams, Cunningham & Co. for the sale to Elizabeth A. Miller of Raleigh of the goods and merchandise mentioned and specified in the account hereto annexed marked "*number I,*" amounting to fifteen hundred twenty-seven dollars and ninety-six cents; which account contains a true statement of the items and particulars of such goods and merchandise, and the prices at which the same were sold respectively, which were fair and reasonable prices; which goods and merchandise were sold at a credit of six months, which is the most usual credit on all such sales, and for similar goods and merchandise.

And the deponent further says, that such goods and merchandise, so sold and specified in said account, are contained and set forth in the paper hereto annexed, entitled and headed "list of millinery articles," to which and on the same sheet is added the guaranty or security of Calvin Jones, bearing date "Raleigh, Sept. 25th, 1832, and addressed to Mr. Williams, and a certificate or memorandum of, and signed by said Elizabeth A. Miller.

And this deponent further says, that shortly previous to such sale, the said William A. Williams, exhibited to, and put into the hands of said Adams, Cunningham & Co. the said "list of milinery articles" guaranty or security of Calvin Jones, and the certificate or memorandum of Elizaheth A. Miller, for them to ascertain and decide whether they would make such sale on the strength, faith and credit of such guaranty or security of said Calvin Jones, and that upon inquiry they became satisfied of the goodness and responsibility of said Jones; and

this deponent says, that said Adams, Cunningham & Co. did thereupon sell and deliver to said Elizabeth A. Miller, the said goods and merchandise contained and specified in said account, and which are enumerated and specified in said list of millinery articles, upon the faith, strength and credit of such guaranty or security of said Calvin Jones; and the said William A. Williams did pursuant thereto, at the time of such sale, leave the said guaranty or security, with the said Adams, Cunningham & Co.

And this deponent further says, that such goods and merchandise were on or about the date of such sale, by directions of said William A. Williams, shipped to the said Elizabeth A. Miller, by the packet, to the care of Dumas and McIlvaine, Petersburg, Virginia, which is the usual manner of shipping or transmitting goods to Raleigh.

And this deponent further says, that after the before mentioned sale, the said Adams, Cunningham & Co. sold and delivered to the said Elizabeth A. Miller, three other bills of goods at six months credit, amounting in the whole to one thousand and ninety-three dollars and nine cents; and that the account hereto annexed, marked "*number II.*" contains a true statement of the date of such sales, the items and particulars of such goods, and the prices at which the same were sold.

And this deponent further says, that since the said first sale, the said Elizabeth A. Miller has from time to time remitted and made payments to said Adams, Cunningham & Co. on account, without her applying the same or any part thereof to the payment of the goods bought by her, and guarantied or secured by said Calvin Jones, and without giving any instructions or directions as to the appropriation or application of any such payments; and deponent says that said Adams, Cunningham & Co. applied such payments in the manner specified and set forth in the accounts hereto annexed, marked "*number III,*" and "*number IV;*" and deponent believes such account to be just and true, and that the balances appearing to be due thereon respectively, are now justly and truly due said Adams, Cunningham & Co. That, as deponent is informed and believes, the said Elizabeth A. Miller has within the last year married a Mr. Gorham, and now resides at Greeensboro' Alabama; and the said Calvin Jones now resides in Bolivar, Tennessee. That deponent is not, nor never was interested in the matter in controversy in this cause.

JAMES B. CUNNINGHAM.

DISTRICT OF WEST TENESSEE, ss.

I Nathaniel A. McNairy, clerk of the circuit court of the United States for the district aforesaid, do certify that the foregoing is a correct and faithful transcript of the record and proceedings had in said court, in the cause heretofore prosecuted and delivered therein, between Adams, Cunningham & Co. plaintiffs, and Calvin Jones defendant, as the same remains of record in said court.

In testimony whereof, I hereto subscribe my name, and affix the seal of said court at office, in Nashville, the 15th day of [L. S.] November, in the year 1837, and in the 62d year of our independence.

N. A. McNAIRY,
Clerk.

By P. HAY.

No. 84.

E. Tennessee, C. C. U. S. cert'e of div'n.

Wm. Adams, Jno. Cunningham, and Rich'd P. Lawrence, merchants in partnership, under the firm of Adams, Cunningham & Co. plaintiffs *vs.* Calvin Jones.

Filed 22d Feb'y, 1838.